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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,358	12/26/2001	John L. Tetenes JR.	TETJ13A	9629

7590

08/22/2005

RICHARD L. MILLER  
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Dix Hills, NY 11746-4879

EXAMINER
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PARSLEY, DAVID J

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 08/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/027,358

Applicant(s)

TETENES, JOHN L.

Examiner

David J. Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## Detailed Action

### *Amendment*

1. This office action is in response to applicant's amendment filed 6-30-05 and this action is final.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent No. 4,903,429 to Tetenes in view of U.S. Patent No. 4,890,413 to Nelson et al. and U.S.

Patent No. 5,617,669 to Levey in view of U.S. Patent No. 2,377,311 to Campbell in view of U.S.

Patent No. 1,841,956 to Juergens in view of U.S. Patent No. 2,603,028 to Roberts and U.S.

Patent No. 3,499,526 to Willinger.

Referring to claim 1, Tetenes discloses a device for holding a bucket of chum submerged in water comprising, a cylindrical containing component – 16, a circular bottom component permanently attached to a lower edge of the cylindrical containing component – 16, and a toroidal sleeve – 12 fixedly located near an upper edge of the cylindrical containing component –

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16 – see for example figures 1-2. Tetenes further discloses the cylindrical containing component – 16 capturing the bucket of chum – 18 within the device. Tetenes does not disclose a drawstring cooperating with the upper edge of the cylindrical containing component for pulling the upper edge closed. Nelson et al. does disclose a drawstring – 23 for pulling the upper edge – 11 of the cylindrical containing component – 10 for pulling the upper edge – 11 closed – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device for holding a bucket of chum of Tetenes and add the drawstring to close the upper edge of the container of Nelson et al., so as to completely enclose the inside of the container to securely hold what is inside.

Tetenes as modified by Nelson et al. further discloses the cylindrical containing component – (16 of Tetenes and 10 of Nelson et al.) is fabricated out of sheet material – see for example figures 1 of both Tetenes and Nelson et al. It is inherent that the cylindrical containers are made of sheet material since the thicknesses of the walls of the container are so thin. Tetenes as modified by Nelson et al. further discloses the upper edge of the sheet material is the upper edge of the cylindrical containing component, the lower edge of the sheet material is the lower edge of the cylindrical containing component, and the sheet material has two side edges stitched together – see for example figures 1 of both Tetenes and Nelson et al. It is inherent that the side walls are stitched together since that is how components were attached to the container as seen in at item – 20 in Nelson et al. Tetenes as modified by Nelson et al. further discloses the sheet material has a first plurality of orifices – see for example figure 1 of both Tetenes and Nelson et al.

Tetenes as modified by Nelson et al. does not disclose the sheet material has a plurality of orifices therein for permitting chum matter to pass through. Levey does disclose the sheet material has a plurality of orifices – 24 for permitting chum matter to pass through – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device for holding a chum bucket of Tetenes as modified by Nelson et al. and add the sheet material having a plurality of orifices for permitting chum matter to pass through of Levey, so as to allow for the device to be more effective and efficient in that the chum can pass through the container walls and into the water to attract fish.

Tetenes as modified by Nelson et al. further does not disclose the sheet material has a second plurality of orifices in-line therein for cooperating with the drawstring threaded therethrough. Campbell does disclose the sheet material has a second plurality of orifices in-line therein for cooperating with the drawstring – 12 threaded therethrough – see for example figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device for holding a chum bucket of Tetenes as modified by Nelson et al. and add the sheet material having a second plurality of orifices to thread the drawstring of Campbell, so as to securely hold the drawstring to the sheet material during use.

Tetenes as modified by Nelson et al. does not disclose the sheet material has a longitudinal area extending between the first plurality of orifices and second plurality of orifices in-line, for fabricating the toroidal sleeve. Juergens does disclose the sheet material has a longitudinal area – (at – 5) extending between the first plurality of orifices – (the mesh holes in the bottom portion of the material below – 5) and the second plurality of orifices in-line – (the mesh holes in the upper portion of the material above – 5), for fabricating the toroidal sleeve –

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(at – 5) – see for example figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device for holding a bucket of chum of Tetenes as modified by Nelson et al. and add the sheet material having a longitudinal area for fabricating the toroidal sleeve of Juergens, so as to allow for the device to be easily manufactured in that the toroidal sleeve is integral with the sheet material.

Tetenes as modified by Nelson et al., Levey, Campbell, and Juergens does not disclose the toroidal sleeve is fabricated by stitching a first longitudinal edge of the longitudinal area and a second longitudinal area of the longitudinal area together. Roberts does disclose the toroidal sleeve – 6 is fabricated by stitching – 7' a first longitudinal edge – (at – 7) of the longitudinal area and a second longitudinal area – (at – 7) of the longitudinal area together – see for example figure 5. Therefore it would have been obvious to one of ordinary skill in the art to take the device for holding a bucket of chum of Tetenes as modified by Nelson et al., Levey, Campbell, and Juergens and add the toroidal sleeve is fabricated by stitching a first and second longitudinal edges of the longitudinal area together of Roberts, so as to ensure the toroidal sleeve is securely attached to the device thus making the device stronger and more durable.

Tetenes as modified by Nelson et al., Levey, Campbell, Juergens, and Roberts further discloses the sheet material is a flexible plastic material – see for example column 2 lines 36-38 of Nelson et al. and column 1 lines 31-42 of Roberts. Therefore it would have been obvious to one of ordinary skill in the art to take the device for holding a bucket of chum of Tetenes as modified by Nelson et al., Levey, Campbell, Juergens, and Roberts and further add the sheet material is made of a flexible plastic material of Nelson et al. and Roberts, so as to make the

device more lightweight and more inexpensive by using plastic instead of other heavier materials such as metals.

Tetenes as modified by Nelson et al. further disclose the circular bottom component is fabricated out of sheet material having at least one orifice – see for example figures 1 of both Tetenes and Nelson et al. Tetenes as modified by Nelson et al. does not disclose the orifice permitting chum matter to pass through. Willinger does disclose the orifice – 76 permitting chum matter – 12 to pass through – see for example figure 4. Therefore it would have been obvious to one of ordinary skill in the art to take the device for holding a bucket of chum of Tetenes as modified by Nelson et al. and add the orifice in the bottom of the container permitting chum matter to pass through of Willinger, so as to allow for the chum to be easily removed from the container in that gravity pulls it through the opening without any need for any other outside force.

Tetenes as modified by Nelson et al. and Willinger as applied to claim 6 above, and further in view of Roberts. Tetenes as modified by Nelson et al. and Willinger does not disclose the circular bottom component is permanently attached by stitching near a circumference thereof and near the lower edge of the cylindrical containing component. Roberts does disclose the circular bottom – 3 is permanently attached by stitching – 4 near a circumference thereof and near the lower edge of the cylindrical containing component – 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device for holding a bucket of chum of Tetenes as modified by Nelson et al. and Willinger and add the circular containing component permanently attached to the container by stitching of Roberts, so as to make the device stronger and more durable for repeated use.

Tetenes as modified by Nelson et al., Willinger and Roberts does not disclose a welting has edges sewn in between the circumference of the circular bottom component and the lower edge of the cylindrical containing component. Campbell does disclose a welting – 13 - see figure 3 has edges sewn in between the circumference of the circular bottom component – 11 and the lower edge of the cylindrical containing component – 10 – see figure 3. Therefore it would have been obvious to one of ordinary skill in the art to take the device for holding a bucket of chum of Tetenes as modified by Nelson et al., Willinger, and Roberts and further add the welting sewn between the bottom portion and the lower edge of the cylindrical container of Campbell, so as to make the device stronger and more durable for repeated use.

Tetenes as modified by Nelson et al., Willinger, Roberts, and Campbell further discloses the sheet material is a flexible plastic material – see column 2 lines 28-38 of Nelson et al., and column 1 lines 31-41 of Roberts. Therefore it would have been obvious to one of ordinary skill in the art to take the device for holding a bucket of chum of Tetenes as modified by Nelson et al., Willinger, Roberts, and Campbell and add the sheet material made from plastic of Nelson et al. and Roberts, so as to make the device as inexpensive and lightweight as possible.

Referring to claim 4, Tetenes as modified by Nelson et al., Levey, Campbell, Juergens, Roberts and Willinger further discloses the toroidal sleeve – 12 has a foam flotation element housed therein – see for example column 1 lines 58-68 and column 2 lines 1-2 of Tetenes.

***Response to Arguments***



3. Regarding claim 1, applicant argues that there is no motivation to combine all of the references, that piecemeal analysis was used to combine the references and that there is improper hindsight used to combine the references.

The motivation to combine the references can be found in paragraph 2 of this office action above and the motivation to combine each of the references can be found in the knowledge generally available to one of ordinary skill in the art of chum holders.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding the improper hindsight analysis of the claims, each of the references U.S. Patent No. 4,903,429 to Tetenes in view of U.S. Patent No. 4,890,413 to Nelson et al. and U.S. Patent No. 5,617,669 to Levey in view of U.S. Patent No. 2,377,311 to Campbell in view of U.S. Patent No. 1,841,956 to Juergens in view of U.S. Patent No. 2,603,028 to Roberts and U.S. Patent No. 3,499,526 to Willinger relate to the same field of endeavor being containers for holding objects therein and each of the devices of the references mentioned above are capable of performing the functions set forth in the claims and therefore it is deemed that the combination of these references is proper.

### ***Conclusion***

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4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J. Parsley whose telephone number is (571) 272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



PETER M. POON  
SUPERVISORY PATENT EXAMINER



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley  
Patent Examiner  
Art Unit 3643